SECTION 107 –LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107.01 Insurance Requirements.

(A) Obligation of Contractor. Contractor shall obtain all required insurance as part of the contract price. The Contractor shall not commence any work until it obtains all required insurance. All required insurance must be maintained with a company authorized by law to issue such insurance in the State of Hawaii. The Contractor shall maintain all insurance until final acceptance of the work by the State.

A certificate of insurance shall be from an insurance company or agency licensed in the State of Hawaii. Certificates shall contain a provision that coverages being certified will not be cancelled or materially changed without giving the Engineer at least 30 days prior written notice by registered mail. If the State and its officers and employees are to be Additional Insureds on any of the required insurance, it shall be so noted on the certificate. Should any policy be cancelled before final acceptance of the work by the State, and the Contractor fails to immediately procure replacement insurance as specified, the State, in addition to all other remedies it may have for such breach, reserves the right to procure such insurance and deduct the cost thereof from any money due to the Contractor.

Nothing contained in these insurance requirements is to be construed as limiting the extent of Contractor’s responsibility for payment of damages resulting from its operations under this contract, including the Contractor’s obligation to pay liquidated damages, nor shall it affect the Contractor’s separate and independent duty to defend, indemnify and hold the State and its officers and employees, harmless pursuant to other provisions of the contract documents. The State’s exercise of an option to occupy and use portions of the work does not relieve the Contractor of its obligation to maintain the required insurance until the date of final acceptance.

All insurance described herein shall be primary and cover the insured for all work to be performed under the contract, including changes, and all work performed incidental thereto or directly or indirectly connected therewith, including but not limited to traffic detours, barricades, warnings, diversions, lane closures, and other work performed outside the work area.

Upon request, the Contractor shall furnish the Engineer, a copy of required policies or other proof of coverage satisfactory to the Engineer, of each type of insurance covering the work. Failure to comply with the Engineer’s request may result in suspension of the work, and shall be
sufficient grounds to withhold future payments due the Contractor and to terminate the contract for the Contractor’s default.

(B) Types of Insurance. Contractor shall purchase and maintain insurance described below:

(1) Commercial General Liability (Occurrence form). Minimum limit of $2,000,000 combined single limit per occurrence for each of the following:

(a) Products - Completed/Operations Aggregate,

(b) Personal & Advertising Injury, and

(c) Bodily Injury & Property Damage insurance with the following minimum limits of liability:

The State of Hawaii, its officers and employees, shall be as additional insureds under these coverages.

(2) Comprehensive Automobile Liability. Minimum limit of $1,000,000 combined single limit per accident for bodily injury and property damage

The State of Hawaii, its officers and employees, shall be as additional insureds under these coverages.

(3) Workers Compensation. Workers’ Compensation insurance coverage shall be for all persons whom the Contractor and all its subcontractors employ in carrying out the work under this contract. This insurance shall be in strict conformity with the requirements of the most current and applicable State of Hawaii Worker’s Compensation Insurance laws in effect on the date of the execution of this contract and as modified during the duration of the contract.

(C) Breach of Duty by Contractor or Insurer. If either the Contractor or its insurer wrongfully fails to defend or indemnify the State of Hawaii, its officers and employees, against any claims, the State may debar or suspend the Contractor from bidding, or working on construction projects, and may refuse to permit the insurer to provide insurance on construction projects.

The State may exercise these remedies in addition to other legal or equitable remedies it may have against the Contractor, insurer, or both.

(D) Subcontractor Insurance. The Contractor shall either:
(1) Require its subcontractors to procure and to maintain during the life of its subcontract, subcontractor’s comprehensive general liability, automobile liability and property damage liability insurance of the type and in the same amounts specified herein and further require that such coverage be required by its subcontractors from all lower tier subcontractors. On all such insurance coverages, the State of Hawaii, its officers and employees, shall be additional insureds.

(2) Insure the activities of its subcontractors and their lower tier subcontractors in its own policy.

(E) Self-Insured Retention. The Contractor shall be permitted, in cooperation with its insurers, to maintain a self insured retention for up to 25 percent of the per occurrence combined single limits of the commercial general liability and the automobile liability policies required by the contract documents. The existence of the self-insured retention must be noted on the certificate of insurance coverage submitted to the State or else it will be understood that the insurer is providing first dollar coverage for all claims. For all claims within the self-insured retention amount, the rights, duties and obligations between the Contractor and the State shall be identical to that between a liability insurer and the State, as an additional insured, as if there was no self-insured retention.

107.02 Permits and Licenses. As part of the contract price, the Contractor shall obtain all permits and licenses required by law to perform the work and pay charges, fees, and taxes incidental to obtaining such permits and licenses. The Contractor assumes exclusive responsibility for identifying and acquiring all permits and licenses necessary to perform the work, except for those permits and licenses identified in the contract documents as being the responsibility of the State.

The terms and conditions of any permit or license required for performance of the work, whether or not issued in the name of the Contractor, are incorporated into the contract. Compliance with such terms and conditions are duties owed by the Contractor to the State under the contract. Notwithstanding the enforcement authority of the permitting or licensing agency, whether or not a State agency, non-compliance by the Contractor with any term or condition of such license or permit shall be deemed non-compliance with the contract and may constitute grounds for default.

The Engineer may grant a time adjustment, cost adjustment, or both, to the extent the Engineer determines that the Contractor was not a contributing factor for such delay.
107.03 Working Hours; Night Work. Normal working hours shall be from 7:00 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Work performed between 3:30 p.m. and 7:00 a.m. of the following day is “night work”.

107.04 Overtime and Night Work. Overtime work shall be considered as work performed in excess of eight hours in any one day or work performed on Saturday, Sunday or legal holiday of the State. Overtime and night work are permissible when approved by the Engineer in writing, or as called for elsewhere within the contract documents. The Contractor shall inform the Engineer in writing at least three working days in advance of its intent to work overtime and 10 working days in advance of any night work. In addition the Contractor shall inform the Engineer of what specific work is to be done during any overtime and night period. When, in the opinion of the Engineer, an emergency exists where overtime or night work is warranted, the written notice requirement may be waived and verbal approval of the Engineer will be sufficient. The Engineer may cancel any overtime or night work previously approved when the Engineer finds that work during these periods is detrimental to public welfare, safety, or the interest of the State.

107.05 Overtime and Night Payment for State Inspection Service.

(A) State’s Responsibility for State’s Cost. The State shall be responsible for overtime or night work payment for State’s staff and inspection personnel including consultants when the contract requires overtime or night work to be performed, or directs the Contractor to work additional shifts or overtime for State's convenience.

(B) Contractor’s Responsibility for State’s Cost. The Contractor shall be responsible for overtime or night work payment for State’s staff and inspection personnel including consultants when the Contractor does any other overtime or night work. The Contractor shall pay the following costs incurred by the State:

(1) The payroll costs for the State’s staff and inspection personnel assigned in connection with such work, including but not limited to salaries, the State’s share of contributions to the employee’s retirement, medical plan, social security, vacation, sick leave, worker’s compensation funds, per diem, and other applicable fringe benefits and overhead expenses, incurred on account of such work.

(2) The transportation costs incurred by the State’s staff and inspection personnel, which are based on established rental rates or mileage allowance in use by the State for the particular equipment or vehicle.
Fees and other costs billed the State by consultants engaged on the project for overtime and nighttime work.

(C) Payment for Inspection Service. The monies due the State for costs described herein shall be deducted from the monies due or to become due the Contractor. The Contractor shall not pay the State’s employees directly.

107.06 Contractor Duty Regarding Public Convenience. The Contractor shall at all times conduct the work in such manner and in such sequence as will insure the least practicable interference with pedestrian, bicycle, and motor passageways. The Contractor shall plan and provide appropriate detours, signs, flashers, personnel, warnings, barricades and other devices for safely and legally handling pedestrian, bicycle, and motor traffic.

107.07 Assignment or Change of Name.

(A) General. The Contractor shall not sell, transfer, assign, or otherwise dispose of this contract or any part hereof or any right, title, or interest herein without the written consent of the Engineer.

The Contractor may assign money due or to become due under the contract and such assignment will be recognized by the State, if given written notice thereof, to the extent permitted by law. Any assignment of monies shall be subject to all set-offs in favor of the State and to all deductions provided for in the contract including but not limited to liquidated or actual damages for delay and money retained by the State for the completion of the work in the event that the Contractors should be in default.

(B) Recognition of a Successor in Interest; Assignment. When in the best interest of the State, a successor in interest may be recognized in an assignment agreement in which the Contractor and the transference and the State shall agree that:

(1) The transferee assumes all of the Contractor’s obligation.

(2) The Contractor remains liable for all obligations under the contract but waives all rights under the contract against the State.

(3) The Contractor shall continue to furnish, and the transferee shall also furnish, all required bonds.

(C) Change of Name. When a Contractor requests to change the name in which it holds a contract with the State, the Engineer shall, upon receipt of a document indicating such change of name (for example; an
amendment to the articles of incorporation of the corporation), enter into
an agreement with the requesting Contractor to effect such a change of
name. The agreement changing the name shall specifically indicate that
no other terms and conditions of the contract are thereby changed.

107.08 Laws to be Observed; Indemnity. The Contractor at all times shall
observe and comply with all Federal, State, and local laws, ordinances, rules,
regulations, and permit and license requirements which in any manner affect
those engaged or employed in the work, the materials used in the work, and the
conduct of the work. The Contractor shall comply with all orders and decrees
government bodies or officials having any jurisdiction or authority over the
work whether such orders or decrees are directed to the Contractor, its
subcontractors, vendors, and suppliers, or to the State.

No instruction in the contract documents or contained within any directive
from the Engineer to the Contractor to observe and comply with any specific law,
ordinance, rule, regulation, or permit or license requirement shall limit the duty
of the Contractor to observe and comply with all other laws, ordinances, rules,
regulations, or permit or license requirement that relate to the work.

The Contractor shall immediately notify the Engineer in writing of any
orders, directives, notices, decrees, or warnings issued by any governmental
agency to the Contractor, its subcontractors, vendors, and suppliers that a
violation of law, rules, regulations, or permit or license requirement is alleged to
have occurred or is occurring in connection with the work.

The Contractor shall defend, protect, hold harmless, compensate, and
indemnify the State, its officers and employees, against any claim or liability
arising from or based on the violation of any laws, ordinances, rules and
regulations, orders or decrees, or the terms and conditions of any permits and
licenses, whether such orders or decrees are directed to the Contractor, its
subcontractors, vendors, and suppliers or to the State.

107.09 Patented Devices, Materials, And Processes. If the Contractor
desires or is required to use any designs, devices, materials, or processes
covered by letters of patent or copyright, the right for such use shall be procured
by the Contractor from the patentee or owner. The Contractor shall defend,
protect, indemnify and hold harmless, compensate, and where appropriate,
insure, the State from any and all claims, demands, liabilities actions and
judgements for infringement by reason of the use of any such patented designs,
devices, materials or processes, or any trademark or copyright in connection
with the work to be performed under the contract.

107.10 Furnishing Right-Of-Way. Except as noted in the contract
documents, the State will be responsible for securing necessary rights-of-way.
107.11 Safety: Accident Prevention.

(1) The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the Engineer may determine, to be reasonably necessary to protect the life and health of employees and other persons on and around the worksite and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

(2) The Contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards promulgated by the Federal, State, and local authorities.

(3) Authorized Federal, State, and local officials shall have right of entry to any site of contract performance to inspect, investigate, and enforce the matter of compliance with the construction safety and health standards referred to herein.

107.12 Protection of Persons and Property.

(A) Contractor’s Responsibility for Damage to Property. All damage, injury or loss to any property caused during the course of, or arising out of the work, whether or not caused by negligent acts or omissions, shall be the responsibility of the Contractor and shall be remedied promptly by the Contractor. This provision shall not affect the Contractor’s legal rights of subrogation, contribution, and indemnity to recover the costs of remedial measures and other damages to which it may be entitled.

(B) Safety Precautions and Programs. The Contractor shall notify owners of adjacent properties and of underground (or overhead) utilities when performing work which may affect the owners; and shall cooperate with the owners in the protection, removal and replacement of their property.

The Contractor shall not permit any load to be placed on the work, any structure, or roadway or any other location that may endanger the safety of any persons or cause damage to any property. The Contractor shall not injure or destroy trees or shrubs that are identified in the contract documents for preservation nor remove or cut them without permission of the Engineer. Contractor shall protect all land monuments and property marks until an authorized agent has witnessed or otherwise referenced their location and shall not remove them until directed.
In the event the Contractor encounters on the site material reasonably believed to be asbestos or other hazard material that has not been rendered harmless, the Contractor shall stop work in the area and notify the Engineer promptly. The work in the affected area shall be resumed in the absence of hazard materials or when the hazard has been rendered harmless.

(C) Notification to the Engineer. The Contractor shall notify the Engineer in writing not later than noon of the following working day whenever:

(1) Police, fire or other public safety officers are called to the work site for any reason or are present at the work site for any public safety related reason.

(2) Any person is treated or evacuated from the work site by emergency medical services personnel.

(3) Any member of the public claims to have been injured at the work site.

(4) The Contractor witnesses a member of the public being involved in an accident at the worksite, or on account of conditions related to the work, whether or not visible injuries occur.

(5) Any representative of a Federal, State, or County regulatory or enforcement agency is present at the work site including but not limited to any representative of Department of Health, EPA, OSHA, and public works.

107.13 Pollution Control and Protection Of Archeological, Historical, and Burial Sites.

(A) Erosion, Siltation and Pollution Control. The Contractor shall exercise precaution to prevent silting and pollution of oceans, rivers, streams, lakes, and reservoirs and other bodies and conveyances of water.

The Contractor shall provide for pollution and erosion control during the work including periods of suspension of contract performance. If material begins to erode, the Contractor shall act immediately to bring the siltation, erosion, and pollution under control. See Section 209 – Temporary Water Pollution, Dust and Erosion Control.

Follow guidelines in the City and County of Honolulu’s “Best Management Practices Manual for Construction Sites in Honolulu”, in developing, installing, and maintaining BMPs for all projects. Follow City

(B) Archaeological, Historical, and Burial Sites. Whenever the Contractor encounters sites of potentially historic or archaeological significance such as walls, platforms, pavements and mounds, or remains such as artifacts, burials, concentration of charcoal or shells, work shall cease in the immediate vicinity of the site and the site shall be protected from damage. The Contractor shall suspend any work that may affect the site and inform the Engineer immediately. Upon direction by the Engineer, the Contractor shall provide and install temporary fencing to protect such sites. The Contractor shall not resume the work suspended without the prior written direction of and subject to the conditions set by the Engineer.

107.14 Responsibility For Damage Claims; Indemnity. The Contractor shall compensate and make whole the State for all loss or damage to the State’s property and facilities arising out of any act or omission in the performance of the work by the Contractor, any subcontractor, or their employees and agents.

The Contractor shall defend, hold harmless, compensate, and indemnify the State, its employees and officers, against any loss, demand, claim, liability, suit, action, cause of action, judgment, cost and expenses including attorney’s fees, based upon personal injury, death, or property damage which arise out of the Contractor’s performance under the contract, including the operations and performance of one or more subcontractors, whether or not a lawsuit is filed against the State and whether or not the Contractor is named as a party to any such lawsuit, unless and until a court of competent jurisdiction makes a final non-reviewable determination that the personal injury, death, or property damage was caused solely by the negligence of the State.

The State may participate in the defense of any claim or suit brought against its officers or employees, without relieving the Contractor of any obligation hereunder. The purchase of liability insurance shall not relieve the Contractor of the obligations described herein. If the Contractor and its insurer fail to undertake the defense of the State, its employees and officers, after a tender of defense has been duly made, the State may retain and withhold money to cover the Contractor’s obligation whether or not the Contractor is terminated for cause.

The Contractor shall pay all just claims for materials, supplies, tools, labor and other just claims against the Contractor or any subcontractor in connection with this contract, and the payment bond or security will not be released by final acceptance and payment by the State unless all such claims are paid or released. The State may, but is not obligated to, withhold or retain as much of the monies due or to become due the Contractor under this contract.
107.15 Disputes and Claims.

(A) Written Notice A Condition Precedent to Claim. As a condition precedent to any claim for damages, or any matter dealing with contract price or contract time, the Contractor must give all notices of a potential claim as required by the contract documents including but not limited to the following Subsections of these general provisions:

1. 104.02 – Changes
2. 104.03 – Field Orders
3. 104.04 – Contract Change Orders
4. 104.08 – Differing Site Conditions
5. 105.04 – Review and Acceptance Process
6. 106.05 – Sample Submittals
7. 108.05 – Contract Time

(B) Contractor’s Duty to Maintain Accurate and Contemporaneous Records. Upon delivering written notice of a potential claim as described in Subsection 107.15(A) – Written Notice A Condition Precedent to Claim, the Contractor has the duty to support and substantiate all claims by maintaining accurate, contemporaneous records of the subject work and the time and costs thereof. The Engineer may direct the manner and the format in which such records must be prepared, maintained, and verified. The Contractor shall comply with such directives at no increase in contract price or contract time. Any directive from the Engineer regarding the manner and format for the keeping of records associated with the potential claim shall not in any way be deemed an agreement by the State regarding the validity of any element of the claim.

(C) Contractor to Proceed with Work. The Contractor shall at all times continue with performance of the contract in full compliance with the directions of the Engineer. Continued performance by the Contractor shall not prejudice any claim for damages or any matter dealing with contract price or contract time provided that the notice of a potential claim is given in writing by the Contractor in the manner and within the time set forth in the contract documents.

(D) Making of a Claim. All Contractors’ claims for damages or any matter dealing with contract price or contract time shall be submitted in writing to the Engineer. The written submission (THE CLAIM) shall be clearly identified and labeled as a claim. The Contractor shall sequentially number its claims in the chronological order submitted to the Engineer. No claim shall be valid if it is delivered to the Engineer after
the date of final acceptance or later than 180 days after Contractor’s delivery of its notice of potential claim, whichever comes first.

The Claim shall, at a minimum, contain the following:

(1) A detailed description of the facts and circumstances that justify every element of claim. The detailed description shall include, but is not limited to, providing all necessary dates, locations, and items of work affected by the claim.

(2) The specific provisions of the contract or laws which support the claim and a statement of the reasons why such provisions support the claim.

(3) A copy of the related written notice of potential claim required by Subsection 107.15(A) – Written Notice A Condition Precedent to Claim.

(4) Any other documents that support the claim.

(5) If an adjustment of time for the performance of the contract is sought:

(a) The specific days and dates for which it is sought.

(b) The specific reasons the Contractor believes a time adjustment should be granted.

(c) The specific provisions of the contract under which additional time is sought.

(d) The Contractor’s detailed analysis of its previously submitted time scaled logic diagram (TSLED) schedule and impact on the critical path.

(6) If additional monetary compensation is sought, the claim cannot be in an amount greater than the Contractor would be entitled to under the terms, conditions and limitations set forth in Subsection 109.06 – Force Account Provisions and Compensation, however the Engineer may determine the Contractor’s entitlement, if any, in accordance with any payment method described in 104.06 – Methods of Price Adjustment. The exact amount sought and a breakdown of that amount into the following categories shall be provided to the Engineer:

(a) Labor. Categories such as listing of individuals, description and location of work performed, classification,
hours worked, wage rate, fringe benefits, and employee number if available.

(b) Materials. Categories such as invoices, purchase orders, evidence of payment, descriptions and quantities.

(c) Equipment. Categories such as detailed description (make, model, year, attachments, and serial number), hours of use and dates of use.

(d) Contractor’s Margin for Profit and Overhead.

(e) Other categories as specified by the Contractor or the State.

(7) The claim shall be certified on behalf of the Contractor by an authorized representative, as follows:

Under penalty of law for submission of false claims, false statements, and misrepresentation, the undersigned, ________________________________

(Name)

______________________________

(Title)

______________________________

(Company)

hereby certifies that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the State of Hawaii is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

______________________________

Signature Date

(E) Subcontractor’s Claim. When the Subcontractor submits a claim to the Contractor and the Contractor, upon its review and investigation of said claim, concludes that the State is ultimately liable for payment of any part of said claim and the Contractor chooses to seek recovery against the State for all or any part of the Subcontractor’s claim, the Contractor shall:

(1) Independently verify the basis for and amount of said claim.
(2) Limit said claim to only those portions for which the State may be liable.

(3) Submit said claim as a Contractor's claim, in accordance with this section.

(F) **Engineer's Review and Decision.** The Engineer shall review the claim, and may request and the Contractor shall provide additional information, documentation, and other evidence. The Engineer may conduct interviews with Contractor's employees and other persons having knowledge related to the claim.

The Engineer shall render a written decision on the claim after the claim is complete and fully documented, as follows:

(i) Within 60 days for claims less than $50,000.

(ii) Within 90 days on claims exceeding $50,000.

If the Engineer does not issue a written decision within the time period described herein, then the Contractor may proceed as if the claim has been denied in its entirety. If the claim submittal is found to be incomplete, the Contractor shall be notified to provide the additional information that is required. When this occurs, the Engineer’s review time will be adjusted as deemed appropriate and the Contractor will be notified.

The decision will be sent to the Contractor by Certified Mail, Return Receipt Requested.

(G) **Appeal of the Engineer’s Decision.**

(1) Any Contractor aggrieved by an adverse decision by the Engineer on a claim may appeal the decision to the Director, as head of the purchasing agency as specified in the Hawaii Administrative Rules for Procurement Disputes.

(2) Appeals of the Engineer’s decision must be filed in writing not later than 30 days after delivery of the Engineer’s decision on the claim to the Contractor, or if no written decision is delivered, within 30 days after the deadline for the Engineer’s decision. A copy of the notice of appeal of the Engineer’s decision shall be delivered to the Engineer.

(3) The record on appeal by the Contractor to the Director shall be limited to the Claim as submitted by the Contractor described in Subsection 107.15(D) – Making of a Claim, the Engineer's
response to the claim, the project file, and any other material or
evidence the Director, in the Director’s discretion, believes may be
useful in deciding the merits of the appeal.

(4) In its notice of appeal of the Engineer’s decision, the
Contractor shall provide specific citations to the Engineer’s decision
and explanations as to why the Contractor believes the Engineer’s
decision was incorrect.

(5) All controversies and claims which are appealed to the
Director shall be decided by the Director within 90 days after the
filing of the appeal by the Contractor; provided that:

(a) If the Director does not issue a written decision within
90 calendar days after written request for a final decision, or
within such longer period as may be agreed upon by the
parties, then the Contractor may proceed as if the appeal
was denied.

(b) The Director immediately furnishes a copy of the
decision to the Contractor, by certified mail, return receipt
requested, or by any other method that provides evidence of
receipt.

(c) Any such decision shall be final and conclusive,
unless fraudulent, or unless the Contractor brings an action
seeking judicial review of the decision in a Hawaii circuit
court within the six months from the date of receipt of the
decision.

(H) Contractor’s Duty to Continue Work. During the claim review
and appeal process including any litigation in relation to the Claim, the
Contractor shall proceed diligently with performance of this contract,
except where:

(1) The State has suspended the work, or has terminated the
contract for default of the Contractor or for the convenience of the
State.

(2) There has been an alleged material breach of contract by
the State excusing further performance by the Contractor; provided
that in such event the Contractor shall proceed diligently with the
performance of the contract where the Director has made a written
determination that continuation of work under the contract is
essential to the public health and safety.
(A) Known or Suspected Contaminated or Hazardous Items and Material. If the contract documents have noted an area of known or suspected contaminated or hazardous items or material within the project limits, in the absence of specific orders from the Engineer or directions in the contract documents, the Contractor shall report the discovery of such items or material to the appropriate governmental agencies, cooperate with all investigations and either remediate or remove and dispose of such items or material as part of the contract price unless otherwise noted in the contract documents. Upon encountering any such items or material the Contractor shall immediately notify the Engineer.

(B) Unknown Contaminated or Hazardous Items and Material. If the Contractor encounters or exposes any items, material or other conditions within the worksite not previously known or suspected to be contaminated or hazardous, but which exhibits properties which may indicate the presence of such items or material, the Contractor shall immediately notify the Engineer. Claims by the Contractor for additional money or time arising from work involving such items, material or other conditions, including the cost and time associated with notifying and providing written reports to government agencies listed below, shall be subject to the terms and conditions of Subsection 104.08 – Differing Site Conditions.

(C) Contractor's Duty to Report. Whenever the Contractor encounters or exposes any hazardous or contaminated items, material or conditions at the worksite whether the existence of which was previously known, suspected, or unknown, the Contractor shall notify the State Department of Health/HEER office, the Federal Environmental Protection agency, the U.S. Coast Guard, the National Response Center, and other appropriate government agencies, and comply with any directives or instructions provided by them.

(D) Material and Waste Brought to the Worksite. The Contractor shall assume sole responsibility for

(1) The management of all regulated materials and items brought to the worksite.

(2) The management of all waste generated by or incidental to the Contractor's operations, including but not limited to lubricants, antifreeze, engine fluids, paints, and solvents.

Management of such materials and items includes, but is not limited to, their transport, storage, handling, and disposal.
(E) Reimbursement of State Expenses. In addition to all other remedies provided by law or contract, the State may withhold from or recover from the Contractor any money it is required to expend to remediate, remove, or dispose of any such items and material, as well as the cost of any fines or impositions made by appropriate enforcement agencies arising from the management of such items and material, whether or not the Contractor exercised due care.

107.17 Right to Audit Records, Records Maintenance, Retention and Access. Pursuant to HRS Chapter 103D-317 the State, at reasonable times and places, may audit the books and records of a Contractor, prospective contractor, subcontractor and prospective subcontractor relating to the Contractor’s or subcontractor’s cost or pricing data. Any such audits may be conducted by Federal and State employees or by consultants working on behalf of the State. The Contractor and subcontractor(s) shall maintain the books and records for a period of three years from the date of final payment under the contract.

The Contractor and its subcontractors shall, in accordance with generally acceptable accounting practices, maintain fiscal records and supporting documents and related files, papers, and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices related to the Contractor and subcontractor’s performance of work under this contract.

The representatives of the State (and Federal government representatives when federal funds are utilized), have the right to inspect and copy any book, document, paper, file, or other record, that is related to the performance of the work of the Contractor and any subcontractor.

The Contractor shall provide full cooperation during any audit or inspection and shall insure that its subcontractors comply with this requirement. The Contractor shall bear all costs (including attorney’s fees) of enforcement in the event of its or its subcontractor’s failure or refusal to fully cooperate.

This right of inspection and audit shall not be limited to the required retention period but shall last as long as records are retained. The Contractor and subcontractor shall retain all records related to the Contractor and subcontractor’s performance of work under this Agreement for three years from the date of final payment, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the three year period, the Contractor and subcontractors shall retain the records until final resolution of all issues that arise from it, or until the end of the three year retention period, whichever occurs later.

END OF SECTION 107

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